

1-1 By: Williams S.B. No. 1427
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 14, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 14, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1427 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of staff leasing services.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 91.001, Labor Code, is amended by adding
1-13 Subdivisions (2-a) and (18) to read as follows:
1-14 (2-a) "Assurance organization" means an independent
1-15 entity approved by the commission that:
1-16 (A) provides a national program of accreditation
1-17 and financial assurance for staff leasing services companies;
1-18 (B) has documented qualifications, standards,
1-19 and procedures acceptable to the department; and
1-20 (C) agrees to provide information, compliance
1-21 monitoring services, and financial assurance useful to the
1-22 department in accomplishing the provisions of this chapter.
1-23 (18) "Working capital" of an applicant means the
1-24 applicant's current assets minus the applicant's current
1-25 liabilities as determined by generally accepted accounting
1-26 principles.
1-27 SECTION 2. Section 91.014, Labor Code, is amended to read as
1-28 follows:
1-29 Sec. 91.014. WORKING CAPITAL [NET WORTH] REQUIREMENTS.
1-30 (a) An applicant for an original or renewal license must
1-31 demonstrate positive working capital in the following amounts [a
1-32 net worth as follows]:
1-33 (1) \$50,000 if the applicant employs fewer than 250
1-34 assigned employees;
1-35 (2) \$75,000 if the applicant employs at least 250 but
1-36 not more than 750 assigned employees; and
1-37 (3) \$100,000 if the applicant employs more than 750
1-38 assigned employees.
1-39 (b) The applicant shall ~~may~~ demonstrate the applicant's
1-40 working capital [net worth] to the department by providing the
1-41 department with the applicant's financial statement [or a copy of
1-42 the applicant's most recent federal tax return]. The financial
1-43 statement must be prepared in accordance with generally accepted
1-44 accounting principles, be audited by an independent certified
1-45 public accountant, and be without qualification as to the going
1-46 concern status of the applicant. An applicant that has not had
1-47 sufficient operating history to have audited financial statements
1-48 based on at least 12 months of operations must meet the financial
1-49 capacity requirements required by Subsection (a) and provide the
1-50 department with financial statements that have been reviewed by a
1-51 certified public accountant. The applicant may [also] satisfy
1-52 any deficiencies in the working capital [the net worth] requirement
1-53 through guarantees, letters of credit, a bond in an amount that
1-54 demonstrates compliance with the amounts required under
1-55 [requirements of] Subsection (a), or other security acceptable to
1-56 the department. A guaranty is not acceptable to satisfy this
1-57 subsection unless the applicant submits sufficient evidence to
1-58 satisfy the department that the guarantor has adequate resources to
1-59 satisfy the obligations of the guaranty.
1-60 (c) ~~[In computing net worth, an applicant shall include~~
1-61 ~~adequate reserves for all taxes and insurance, including reserves~~
1-62 ~~for claims incurred but not paid and for claims incurred but not~~
1-63 ~~reported under plans of self-insurance for health benefits. The~~

2-1 ~~computation of net worth by an applicant is to be made according to~~
2-2 ~~Section 448, Internal Revenue Code (26 U.S.C. Section 448).~~

2-3 ~~[(d) A document submitted to establish net worth must show~~
2-4 ~~the net worth on a date not earlier than nine months before the date~~
2-5 ~~on which the application is submitted. A document submitted to~~
2-6 ~~establish net worth must be prepared or certified by an independent~~
2-7 ~~certified public accountant.] Information submitted to or~~
2-8 maintained by the department is subject to Chapter 552, Government
2-9 Code, other than information related to:

- 2-10 (1) identification of client companies;
- 2-11 (2) working capital ~~[net worth]~~;
- 2-12 (3) financial statements; or
- 2-13 (4) federal tax returns.

2-14 SECTION 3. Section 91.020, Labor Code, is amended to read as
2-15 follows:

2-16 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The
2-17 department may take disciplinary action against a license holder on
2-18 any of the following grounds:

- 2-19 (1) engaging in staff leasing services or offering to
2-20 engage in the provision of staff leasing services without a
2-21 license;
- 2-22 (2) transferring or attempting to transfer a license
2-23 issued under this chapter;
- 2-24 (3) violating this chapter or any order or rule issued
2-25 by the executive director or commission under this chapter;
- 2-26 (4) failing after the 31st day after the date on which
2-27 a felony conviction of a controlling person is final to notify the
2-28 department in writing of the conviction;
- 2-29 (5) failing to cooperate with an investigation,
2-30 examination, or audit of the license holder's records conducted by
2-31 the license holder's insurance company or the insurance company's
2-32 designee, as allowed by the insurance contract or as authorized by
2-33 law by the Texas Department of Insurance;
- 2-34 (6) failing after the 31st day after the effective
2-35 date of a change in ownership, principal business address, or the
2-36 address of accounts and records to notify the department and the
2-37 Texas Department of Insurance of the change;
- 2-38 (7) failing to correct any tax filings or payment
2-39 deficiencies within a reasonable time as determined by the
2-40 executive director;
- 2-41 (8) refusing, after reasonable notice, to meet
2-42 reasonable health and safety requirements within the license
2-43 holder's control and made known to the license holder by a federal
2-44 or state agency;
- 2-45 (9) being delinquent in the payment of the license
2-46 holder's insurance premiums other than those subject to a
2-47 legitimate dispute;
- 2-48 (10) being delinquent in the payment of any employee
2-49 benefit plan premiums or contributions other than those subject to
2-50 a legitimate dispute;
- 2-51 (11) knowingly making a material misrepresentation to
2-52 an insurance company or to the department or other governmental
2-53 agency;
- 2-54 (12) failing to maintain the working capital ~~[net~~
2-55 ~~worth requirements]~~ required under Section 91.014; or
- 2-56 (13) using staff leasing services to avert or avoid an
2-57 existing collective bargaining agreement.

2-58 SECTION 4. Subchapter B, Chapter 91, Labor Code, is amended
2-59 by adding Section 91.021 to read as follows:

2-60 Sec. 91.021. ELECTRONIC FILING AND COMPLIANCE. (a) The
2-61 commission may adopt rules to permit the acceptance of electronic
2-62 filings under this chapter, including the filing of applications,
2-63 documents, reports, and other documents required by this chapter.
2-64 The rules may provide for the acceptance of electronic filing and
2-65 other assurance by an assurance organization, qualified and
2-66 approved by the commission, that provides satisfactory assurance
2-67 and documentation of compliance acceptable to the department that
2-68 meets or exceeds the requirements of this chapter.

2-69 (b) A staff leasing services company may authorize an

3-1 assurance organization that is qualified and approved by the
3-2 commission to act on its behalf in complying with the licensing
3-3 requirements of this chapter, including the electronic filing of
3-4 information and the payment of application and licensing fees. Use
3-5 of an assurance organization is optional and is not mandatory for a
3-6 staff leasing services company.

3-7 (c) Nothing in this section may be construed to change or
3-8 affect the department's authority to issue licenses, revoke
3-9 licenses, conduct investigations, or enforce any provision of this
3-10 chapter.

3-11 SECTION 5. Subchapter D, Chapter 91, Labor Code, is amended
3-12 by adding Section 91.050 to read as follows:

3-13 Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For
3-14 the purpose of determining tax credits, grants, and other economic
3-15 incentives provided by this state or other governmental entities
3-16 that are based on employment, assigned employees are considered
3-17 employees of the client, and the client is solely entitled to the
3-18 benefit of any tax credit, economic incentive, or other benefit
3-19 arising from the employment of assigned employees of the client.
3-20 This subsection applies even if the staff leasing services company
3-21 is the reporting employer for federal income tax purposes.

3-22 (b) If a grant or the amount of any incentive described by
3-23 Subsection (a) is based on the number of employees, each client
3-24 shall be treated as employing only those assigned employees
3-25 co-employed by the client. Assigned employees working for other
3-26 clients of the staff leasing services company may not be included in
3-27 the computation.

3-28 (c) Each staff leasing services company shall provide, on
3-29 the request of a client or an agency of this state, employment
3-30 information reasonably required by the state agency responsible for
3-31 the administration of any tax credit or economic incentive
3-32 described by Subsection (a) and necessary to support a request,
3-33 claim, application, or other action by a client seeking the tax
3-34 credit or economic incentive.

3-35 SECTION 6. Subdivision (12), Section 91.001, Labor Code, is
3-36 repealed.

3-37 SECTION 7. The changes in law made by this Act regarding the
3-38 qualifications for or the issuance or renewal of a license apply to
3-39 a staff leasing services license issued or renewed under Chapter
3-40 91, Labor Code, on or after December 31, 2010. A license issued or
3-41 renewed before December 31, 2010, is governed by the law as it
3-42 existed immediately before that date, and that law is continued in
3-43 effect for that purpose.

3-44 SECTION 8. (a) Except as provided by Subsection (b) of
3-45 this section, this Act takes effect September 1, 2009.

3-46 (b) Section 91.014, Labor Code, as amended by this Act,
3-47 takes effect December 31, 2011.

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